

Michael Makarov (ID: 034162012)
Law Offices of Michael Makarov, LLC
12-18 River Road
Fair Lawn, New Jersey 07410
Phone: (201) 773-9399
Fax: (201) 773-9398
law@njlegalservices.com
Attorneys for Plaintiffs

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NEW JERSEY (TRENTON)**

In re:

ANTHONY J. CANONICO, III AND VIKKI H.
CANONICO,

Debtors.

Case No. 16-34088 (MBK)

Chapter 7

IRIS HOLZBERG AND ANDREW
HOLZBERG,

Plaintiffs,

Hon. Michael B. Kaplan

Adv. Pro. No. _____

v.

ANTHONY J. CANONICO III aka US
IRRIGATION LLC AND VIKKI H.
CANONICO aka VH CANONICO
ENTERPRISES INC,

Defendants.

COMPLAINT

Plaintiffs, Iris Holzberg and Andrew Holzberg, creditors, by and through their counsel, Michael Makarov, Esq., of the Law Offices of Michael Makarov, LLC, way of Complaint against Defendants, Anthony J. Canonico III aka US Irrigation LLC and Vikki H. Canonico aka VH Canonico Enterprises Inc, commence this adversary proceeding objecting to Debtors' discharge under 11 U.S.C. § 727 and seeking a determination as to the dischargeability of the Debtors' debt to Plaintiffs under 11 U.S.C. § 523.

PROCEDURAL HISTORY, JURISDICTION AND VENUE

1. On December 20, 2016, Debtors filed a joint voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J) and § 157(b)(2)(I).
3. The United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”) has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157 and § 1334.
4. Venue is properly laid in the District of New Jersey pursuant to 28 U.S.C. § 1409.

PARTIES

5. Plaintiffs, Iris Holzberg and Andy Holzberg (hereinafter referred to collectively as “Plaintiffs” or “Holzbergs”) are creditors currently residing at 720 Totowa Road, Totowa, New Jersey 07512.
6. Defendant Anthony J. Canonico III aka US Irrigation LLC (hereinafter referred to as “A. Canonico”) is a debtor currently residing at 1 Bear Branch Road, Hamilton, New Jersey 08610.
7. Defendant Vikki H. Canonico aka VH Canonico Enterprises Inc (hereinafter referred to as “V. Canonico”) is a debtor currently residing at 1 Bear Branch Road, Hamilton, New Jersey 08610.
8. VH Canonico Enterprises Inc. (hereinafter referred to as “VHC”) is a New Jersey Corporation with a place of business at 1 Bear Branch Road, Hamilton, New Jersey 08610.
9. V. Canonico is a sole shareholder and Chief Executive Officer of VHC.
10. A. Canonico performs and oversees VHC’s day-to-day business operations.
11. A. Canonico, V. Canonico, and VHC hereinafter are collectively referred to as “Defendants”.

FACTUAL BACKGROUND

12. Defendants collected at least \$226,243 from Plaintiffs to perform various home improvement projects to Plaintiff's residential property located in Totowa, New Jersey.
13. A. Canonico represented to Plaintiffs that he was fully insured and licensed with the Division of Consumer affairs as Home Improvement Contractor.
14. Defendants were not licensed with the Division of Consumer affairs as Home Improvement Contractor.
15. Defendants did not carry commercial general liability insurance in a minimum amount of \$500,000 per occurrence.
16. Defendants lacked the knowledge, experience, and expertise necessary to complete the projects.
17. Majority of the work performed by Defendant was utterly deficient and required extensive repairs by Plaintiffs.
18. Defendants used inferior materials on projects without Plaintiffs' knowledge or consent.
19. Defendants represented to Plaintiffs that all necessary municipal permits have been obtained.
20. Defendants did not obtain necessary municipal permits for any of the work.
21. Defendants failed to honor any of the warranties on work performed.
22. Defendants refused to issue a refund of Plaintiffs' deposit for work they did not commence.

STATE ACTION

23. On January 29, 2016, Plaintiffs commenced an action against Defendants by filing a complaint ("State Complaint") in the Superior Court of New Jersey, Passaic County, Law Division. ("State Action"). State Complaint is annexed hereto to as Exhibit A.

24. State Complaint contained allegations of at least twenty-one (21) violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et. seq.*, in addition to Common Law Fraud, Fraudulent Concealment, Breach of Contract, Negligence, and Negligent Misrepresentation.
25. On or about April 7, 2016, Defendants filed an answer. Defendants' Answer is annexed hereto to as Exhibit B.
26. Defendants were served with the following discovery demands: requests for admissions, interrogatories and request for production of documents.
27. On or about May 2, 2016, Defendants produced their responses to Plaintiffs' requests for admissions.
28. Defendants requested an extension to produce remaining discovery to which Plaintiffs consented. Defendants failed to provide discovery by the extended deadline and a motion to compel discovery was filed by Plaintiffs.
29. On July 22, 2016, Honorable Randal C. Chiocca, J.S.C. entered an order compelling Defendants to provide discovery responses by August 18, 2016. Order to Compel Discovery is annexed hereto as Exhibit C.
30. Defendants failed to comply with the above-referenced Order and Plaintiffs filed a motion to strike Defendants' Answer.
31. On September 16, 2016, Honorable Randal C. Chiocca, J.S.C. entered an order striking Defendants' Answer without prejudice. Order Striking Answer is annexed hereto as Exhibit D.
32. Defendants failed to take necessary steps to cure and Plaintiffs moved to strike Defendants Answer with Prejudice.

33. On December 20, 2016, four days after motion return date, Defendants' counsel informed Judge Chiocca by letter that Defendants filed for bankruptcy demanding stay of State Action against A. Canonico and V. Canonico. Letter to Judge Chiocca is annexed hereto as Exhibit E.

34. On December 20, 2016, Judge Chiocca entered an order striking VHC's Answer with prejudice, but not Answers of defendants A. Canonico and V. Canonico. Order Striking Answer of VHC with prejudice is annexed hereto as Exhibit F.

COUNT I
OBJECTION TO DISCHARGE PURSUANT TO 11 U.S.C. § 727

35. Plaintiffs repeat the allegations contained in paragraphs 1 through 34 as if fully set forth herein.

36. On March 17, 2017, Defendants attended a Rule 2004 Examination. Defendants testimony was inconsistent with Debtors' Bankruptcy Petition, Defendants testimony at the meeting of creditors, and Debtors pleadings and discovery responses in State Action.

37. Upon information and belief, debtors have provided false testimony under oath.

38. Documents produced by D

39. Documents produced by Debtors at Rule 2004 Examination calls into question the accuracy of Defendants Bankruptcy petition.

40. Debtors failed to produce several important financial documents pursuant to Rule 2004 Subpoena.

41. Upon information and belief, debtors have engaged in conduct that warrant denial of discharge pursuant to 11 U.S.C. § 727(a)(2), 727(a)(3), 727(a)(4), and 727(a)(5).

COUNT II
NONDISCHARGEABLE DEBT PURSUANT TO 11 U.S.C. § 523

42. Plaintiffs repeat the allegations contained in paragraphs 1 through 41 as if fully set forth herein.

43. Complaint against Defendants in State Action contains serious allegations of fraud and false representation, as well as willful and malicious conduct by Defendants that warrants Defendants' debt to Plaintiffs nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and 523(a)(6).

WHEREFORE, Plaintiffs respectfully Request this Court to enter judgment against Defendants pursuant to 11 U.S.C. § 727 and 11 U.S.C. § 523, as well as lifting stay on the State Action proceeding against Defendants.

Respectfully submitted,

**LAW OFFICES OF
MICHAEL MAKAROV, LLC**
Attorneys for Plaintiffs

Date: 03/21/17
Fair Lawn, NJ

By: /s/ Michael Makarov
MICHAEL MAKAROV, ESQ.